UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,376	07/26/2001	Kazuo Higashi	1560-0362P-SP	5053

2292	7590	10/03/2005

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER
VAN DOREN, BETH

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO 90C (Rev 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/912,376	HIGASHI ET AL.
	Examiner	Art Unit
	Beth Van Doren	3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
 Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 July 2001</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-25</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-25</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

       1.☒ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date <u>20031016</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____ .

DETAILED ACTION

1.   The following is a non-final, first office action on the merits. Claims 1-25 are pending.

Specification

2.   The abstract of the disclosure is objected to because it contains references to the figures

using reference characters. Applicant is reminded of the proper content of an abstract of the

disclosure, which includes that the abstract should be directed to the entire disclosure. Examiner

requests that the Applicant remove these references to the drawings. Correction is required. See

MPEP § 608.01(b).

Claim Objections

3.   Claim 1 is objected to because due to minor informalities. Claim 1 recites "job unit

(S602)", which references the drawings. Since this reference has no effect on the scope of the

claims, examiner respectfully requests removal of the reference to avoid undue confusion.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5.   Claims 5, 10, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

        Claim 5 recites the steps of calculating an interim remuneration and comparing this

calculated interim remuneration and a first predetermined value. The claim then recites

"deducting a monetary value for adjustment which has been prepared, if the calculated interim

remuneration is lower than the first predetermined value" and "calculating remuneration of the

worker by adding the deducted value to the interim remuneration". These limitations are vague

and indefinite because it is unclear how these limitations are interrelated and, further, what these

limitations functionally perform. Step two states that if the calculated interim remuneration is

lower than a first value, then deduct a prepared adjustment value. However, the claim never

recites from what the deduction is being taken or what the first value represents. Therefore, it is

unclear as to what is occurring in the claim. Step three than states that remuneration is calculated

by adding the deducted value to the interim value. However, it is still unclear as to where this

"deduction" came. The claim language suggests that the deduction is taken from either the

interim remuneration or the first value. If the deduction is taken from the interim remuneration,

it is further unclear as to why it is being added back on to the interim value in the third step (i.e.

nothing changes). Further, deductions by definition are normally subtracted, and therefore that a

deduction is being added is counterintuitive. Clarification is required. The second value is

defined as "not less than the first value". However, it still is not clear as to what the first value is

or what it represents, and further, it is unclear as to what the second value is or what it represents.

For example, the first value could represent a commission value, whereas the second value could

be related to debt. Therefore, the two could not have anything to do with each other.

Examiner asserts that the language of claim 5 is such that a person of ordinary skill in the

art could not interpret the metes and bounds of this claim so as to understand how to avoid

infringement. Clarification is required. For examination purposes, Examiner has applied art

based on her best understanding of the claim.

6.   Claims 10 and 15 contain equivalent limitations and therefore contain the same

deficiencies.

Claim Rejections - 35 USC § 101

7.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8.   Claims 1-16 and 25 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the

technological arts. Mere ideas in the abstract that do not apply, involve, use, or advance the

technological arts fail to promote the "progress of science and the useful arts" (i.e. the physical

sciences as opposed to social sciences, for example) and therefore are found to be non-statutory

subject matter. For a process claim to pass muster, the recited process must somehow apply,

involve, use, or advance the technological arts.

In the present case, claims 1-16 a remuneration calculating method for calculating

remuneration of workers based on job units, appraisal points, and conversion rates. None of

claims 1-16 recite the use of any technology that is functionally used or changed in the process

of calculating such a remuneration. Therefore, since claims 1-16 do not apply, involve, use, or

advance a technological art, it is respectfully submitted that the claimed invention is directed

towards non-statutory subject matter.

As for claim 25, claim 25 is directed to a computer readable memory product on which a

program with program code means is stored. Computer memory with program code is merely

software per se. Software, without the program elements being executed using some hardware

elements, is not considered to be statutory subject matter. Therefore, it is respectfully submitted

that claim 25 is directed towards non-statutory subject matter.

Since the claims 1-16 and 25 are not within the technological arts, as explained above,

claims 1-16 and 25 are deemed to be directed towards non-statutory subject matter.

Claim Rejections - 35 USC § 102

9.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5-8, 10-13, 15-17, 19-21, and 23-25 are rejected under 35 U.S.C. 102(e) as

being anticipated by Swart (U.S. 6,347,306).

10.   As per claim 1, Swart teaches a remuneration calculating method for calculating

remuneration of workers who have made a labor agreement with an enterprise entity, comprising

the steps of:

dividing work into job units to be executed by one or a plurality of persons (See column

3, lines 39-52, column 5, line 57-column 6, line 26, wherein a job is divided into the units of

shifts);

setting a base appraisal point for quantitatively appraising each of the job units (See column 6, lines 15-26, and column 7, lines 1-20, wherein the job unit is judged by hours);

giving each worker an appraisal point which represents whole or some amount of a base appraisal point set for each job unit, according to an accomplishment status of the job unit (See column 6, lines 15-26, and column 7, lines 1-20, wherein the job unit is judged by hours);

determining a conversion rate for converting an appraisal point to a monetary value (See figure 2, column 7, lines 1-20 and 30-45, column 9, lines 50-65, wherein a pay rate converts the hours to a monetary value); and

calculating remuneration of each worker by converting an appraisal point given to the worker based on the conversion rate (See figure 2, column 6, lines 49-column 7, line 22 and lines 31-41, wherein compensation is calculated).

11.   As per claim 2, Swart teaches accepting input of the job unit and base appraisal point which were proposed by the worker and approved by an approver appointed beforehand (See column 5, line 58-column 6, line 15, column 9, lines 50-65, and column 11, lines 10-20, wherein the shift and appraisal time were proposed by the work and are approved by a supervisor before the worker gets credit and paid for the shift).

12.   As per claim 3, Swart teaches accepting input of the base appraisal point which was set based on a present operation value representing an operation value at present (See figure 2, column 5, lines 58-column 6, lines 10, wherein the appraisal point is set by the worker logging in and out of the system).

13.   As per claim 5, Swart discloses calculating an interim remuneration from the conversion

rate and appraisal point (See figure 2, column 6, lines 49-column 7, line 22 and lines 31-41,

wherein compensation is calculated);

        comparing the calculated interim remuneration and a first predetermined value (See

column 6, lines 45-65, column 7, lines 1-20, column 9, line 45-column 10, line 15, wherein the

interim value is compared against hours);

        creating a monetary value for adjustment which has been prepared, if the calculated

interim remuneration is lower than the first predetermined value (See column 6, lines 45-65,

column 7, lines 1-20, wherein the interim value is compared against hours);

        calculating remuneration of the worker by adding the created value to the interim

remuneration (See column 6, lines 45-65, column 7, lines 1-20, wherein pay is added for sick

leave, jury duty, etc.);

        comparing the calculated interim remuneration and a second predetermined value which

is not lower than the first predetermined value (See column 6, lines 45-65, column 9, line 45-

column 10, line15, wherein the interim value is compared against a max);

        increasing the monetary value for adjustment, if the calculated interim remuneration is

higher than the second predetermined value (See column 6, lines 45-65, column 9, line 45-

column 10, line15, wherein the interim value is compared against a max); and

        calculating remuneration of the worker by deducting the increased value from the interim

remuneration (See column 6, lines 45-65, column 9, line 45-column 10, line15, wherein the

worker is docketed pay based on the maximums allowed).

14.   As per claim 6, Swart teaches calculating a debt-credit relationship between the

enterprise entity and the worker (See column 6, lines 54-66, column 7, lines 8-20 and 40-47,

column 11, lines 49-65, wherein there is a debit-credit relationship with the place of

employment); and

     creating a balance sheet of the worker to the enterprise entity after adjusting the

calculated debt-credit relationship by using the monetary value for adjustment (See column 6,

lines 54-66, column 7, lines 8-20 and 40-47, column 11, lines 49-column 12, line 5, wherein the

worker can see itemized the deductions, the credits, and money earned).

15.   As per claim 7, Swart discloses calculating expenses including remuneration of the

worker, which were needed for accomplishing the job unit (See column 6, lines 51-column 7,

line, wherein expenses are determined and used in calculating pay);

     calculating a monetary value of the accomplished job unit (See column 6, lines 51-

column 7, line, wherein expenses are determined and used in calculating pay); and

     creating a profit and loss statement of the worker to the enterprise entity for a

predetermined term, based on the calculated expenses and monetary value (See column 6, lines

51-column 7, line, wherein expenses are determined and used in calculating pay. See column 7,

lines 32-47, column 11, lines 49-column 12, line 5, wherein the worker can see itemized the sum

of expenses and income for a time period).

16.   Claims 8, 10, 11, 12, 13, 15, and 16 recite equivalent limitations to claims 3, 5, 6, 2, 3, 5,

and 6, respectively, and are therefore rejected using the same are and rationale as applied above.

17.   As per claim 17, Swart teaches a remuneration calculating apparatus for calculating

remuneration of workers who have made a labor agreement with an enterprise entity,

comprising:

means for accessing a work database in which information about work is recorded in

conjunction with an appraisal point indicating an appraised value of work (See figure 2, column

5, lines 55-67, column 6, lines 15-25 and line 45-column 7, line 22, wherein a database stores

real time data concerning the work of a worker so it may be appraised);

means for accessing an operating-performance database in which information about

operating performance of the enterprise entity is recorded in conjunction with a conversion rate

for converting an appraised point to a monetary value (See figure 2, column 7, lines 1-20 and 30-

45, column 9, lines 50-65, wherein the information in the database is used to convert to a

monetary value);

means for accepting input of a job unit given by dividing work, a base appraisal point set

for the job unit, and worker's information indicating a worker assigned the job unit (See column

3, lines 39-52, column 5, line 57-column 6, line 26, and column 7, lines 1-20, wherein the work

is divided into shifts/segments, wherein job unit is judged by hours, and a worker's information

is all stored in the system);

means for recording the accepted job unit, base appraisal point and worker's information

in conjunction with each other in said work database (See figure 2, column 6, lines 15-30 and 50-

67, wherein information is stored in the database of the system);

means for accepting input of an accomplishment status value indicating an accomplishment status of the job unit (See column 5, lines 55-67, column 6, lines 1-11 and 55-67, wherein the shift is completed, as input into the system);

means for calculating an appraisal point based on the accepted accomplishment status value and base appraisal point (See column 5, line 55-column 6, line 11, column 7, lines 1-25, wherein an appraisal point is determined);

means for recording the calculated appraisal point in conjunction with the worker's information in said work database (See figure 2, column 5, lines 55-67, column 6, lines 15-30 and 50-67, wherein the information is stored);

means for determining a conversion rate based on the information recorded in said operating-performance database (See figure 2, column 7, lines 1-20 and 30-45, column 9, lines 50-65, wherein a pay rate converts the hours to a monetary value); and

calculating means for calculating remuneration of the worker based on the conversion rate and appraisal point (See figure 2, column 6, lines 49-column 7, line 22 and lines 31-41, wherein compensation is calculated. See column 11, line 65-column 12, line 5, which discusses such a rate).

18.   As per claim 19, Swart discloses:

means for accessing a debt and credit database in which a debt-credit relationship between the enterprise entity and the worker, including a monetary value for adjustment for adjusting remuneration, is recorded (See column 6, lines 54-66, column 7, lines 8-20 and 40-47, column 11, lines 49-column 12, line 5, wherein the debits and credits are stored in the system in real time and the values are used when calculating compensation for the worker);

means for calculating an interim remuneration from the conversion rate and appraisal

point (See column 7, lines 5-20, wherein pay is temporarily calculated from the conversion rate

and the appraisal point);

means for deducting the monetary value for adjustment recorded in said debt and credit

database, if the interim remuneration is lower than a first predetermined value (See column 6,

lines 54-66, column 7, lines 8-20 and 40-47, column 9, line 45-column 10, line 10, wherein pay

is docked); and

means for increasing the monetary value for adjustment recorded in said debt and credit

database, if the interim remuneration is higher than a second predetermined value which is not

lower than the first predetermined value (See column 6, lines 54-66, column 7, lines 8-20 and

40-47, column 11, lines 49-column 12, line 5, wherein bonuses based on commissions are added

to the base salary);

wherein, when the monetary value for adjustment was deducted, said calculating means

calculates remuneration of the worker by adding a deducted value to the interim remuneration,

and, when the monetary value for adjustment was increased, said calculating means calculates

remuneration of the worker by deducting an increased value from the interim remuneration (See

column 6, lines 54-66, column 7, lines 8-20 and 40-47, column 11, lines 49-column 12, line 5,

wherein the debits and credits (external data) is applied to the interim, gross pay).

19.   As per claim 20, Swart teaches means for creating a balance sheet of the worker to the

enterprise entity, after adjusting the debt-credit relationship recorded in said debt and credit

database by using the monetary value for adjustment (See column 6, lines 54-66, column 7, lines

8-20 and 40-47, column 11, lines 49-column 12, line 5, which discusses debits and credits

between the worker and enterprise and wherein the worker can see itemized the deductions, the

credits, and money earned.

20.   Claims 21, 23, 24, and 25 recite equivalent limitations to claims 7, 19, 20, and 17,

respectively, and are therefore rejected using the same are and rationale as applied above.

Claim Rejections - 35 USC § 103

21.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

Claims 4, 9, 14, 18, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Swart (U.S. 6,347,306) in view of Koppelman et al. (U.S. 6,662,164).

22.   As per claim 4, Swart discloses calculating a bonus based on commission (See column 6,

lines 45-65, wherein an employee receives compensation based upon a commission). However,

Swart does not expressly disclose and Koppelman et al. teaches assuming an operation value at a

specific time point in the future as a future operation value, converting the assumed future

operation value to a present operation value representing an operation value at present, and

accepting input of the base appraisal point which was set based on the present operation value

(See column 2, lines 59-65, column 14, line 55-column 15, line 22, and column 16, lines 19-40,

wherein a future operation (target) is set for a time in the future, wherein this future target is used

to measure current performance at the current time. See specifically column 15, lines 5-22).

Both Swart and Koppelman et al. disclose a system that compensates an employee for

work, including rewarding the employee a commission. Commissions are based on performance

expected at some time in the future, and would be judged at present times to see progress.

Therefore, it would have been obvious to one of ordinary skill in the art to compensate an

employee at a present time for progress towards a future goal in order to increase the speed with

which an employee has his/her pay in his/her account, thus paying a worker quicker for actual

work performed. See Swart, column 6, lines 1-16, and column 12, lines 15-30.

23.   Claims 9, 14, 18, and 22 recite equivalent limitations to claim 4 and are therefore rejected

using the same are and rationale as applied above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

Palardy (U.S. 2002/0069144) discloses a compensation system integrates payroll and

human resources information and pays an employee after appraisal.

Bode (U.S. 2001/0032119) teaches an employee database, preparing a roster of scheduled

employees, and comparing the attendance and pay of each employee on the roster to the

predicted values.

Williams (U.S. 5,600,554) teaches a payroll and human resources system wherein

databases are used to store data associated with each employee and to calculate the employee's

salary, after all deductions, etc. are made.

Gates et al. (U.S. 6,411,938) discloses a payroll system that includes an accounting

component that utilizes data from employee, tax, and transaction databases.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bvd
September 16, 2005

TARIQ R. HAFIZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600